

United States Senate

March 16, 2009

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The Honorable Tom Vilsack
Secretary
United States Department of Agriculture
1400 Independence Avenue SW
Washington, DC 20250-0001

Dear Tom:

Earlier, you received a letter from me raising two specific concerns related to the Wetland Reserve Program's (WRP) Flooded Land provisions. My request (attached) was to have the 6.5 foot water depth restriction removed and to increase the allocation of WRP funding to the state to allow for the enrollment of at least 50,000 acres in 2009.

Since that time, we have been informed of several additional issues, both in regulation and administration, that need adjustment if the program is to be successful.

Interim Rule Concerns:

- Irrespective of the request to remove the water depth limitation, the interim rule seeks to determine eligibility "at the time of enrollment". The Secretary should base this eligibility determination on the "time of application" which is within the applicant's control. An applicant should not be held hostage to the failure of an agency to timely act on submitted applications.
- Despite statutory requirements instructing the Secretary to conduct a "survey" to determine the WRP interest within Prairie Pothole Region (PPR) states, the language of the interim final rule uses much weaker language allowing for a simple "assessment." The interim rule should follow the legislative directive. An accurate survey is imperative if the Secretary intends to accurately adjust allocations in reflection of program interest within PPR states.
- One key enrollment requirement for land submitted under the flooded land provision is for the soil to be hydric. As a practical matter, this requirement appears to limit flooded lands that are beyond the normal basin of a closed basin lake or pothole. Why would the soil or landscape characteristics be more restrictive through the flooded lands provision as compared to other wetlands reserve program qualified land? The most serious limitation of this provision is that it will likely prevent the addition of significant uplands that might be combined with qualified flooded land.

Administrative Concerns:

- NRCS has informed producers that only “squared out” parcels are acceptable. As you can imagine, contours on the landscape following a 6.5 foot depth do not follow nice square boundaries. NRCS has also instructed states that they may not square out offers to include land beyond the 6.5 foot depth. These instructions appear to prohibit entry and avoid enrollment of targeted acreage.
- NRCS will not to complete enrollments in the WRP until FSA completes the \$1 million Adjusted Gross Income test specific to the WRP. I understand it could be June before these rules will be announced. In the meantime, hundreds of landowners who might have been eligible at the time of application may no longer be eligible at the time of enrollment all because of decisions only within the control of the Agency.

While each of these issues is of significant concern relative to WRP enrollment of flooded lands, their combined effect will be to thwart the congressional intent of the program.

I look forward to your response on this issue. If you need further information, please don't hesitate to contact my staff:

202-224-9484 John Fuher
701-232-8030 Scott Stofferahn

Sincerely,

A handwritten signature in black ink, appearing to read "Kent Conrad". The signature is fluid and cursive, with the first name "Kent" and last name "Conrad" clearly distinguishable.

KENT CONRAD
United States Senator

KC: fss
Enclosure